



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2005

Mr. Randy A. Stonerod
Police Legal Advisor
City of Corpus Christi
321 John Sartain
Corpus Christi, Texas 78401

OR2005-03619

Dear Mr. Stonerod:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222716.

The Corpus Christi Police Department (the "department") received a request for information relating to an incident involving a specified date and location and a named individual. You inform us that the department has released some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.130 and 552.132 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.130 excepts from public disclosure information that relates to "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(2). We have marked the Texas motor vehicle information that the department must withhold under section 552.130.

Section 552.132 provides in part:

(a) Except as provided by Subsection (f), in this section, "crime victim" means a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:

(1) the name, social security number, address, or telephone number of the crime victim; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

...

(f) An employee of a governmental body who is also a crime victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the crime victim, including a photograph or other visual representation of the victim.

Gov't Code § 552.132(a), (b), (f). In this instance, the information that you seek to withhold under section 552.132 is not held by the crime victim's compensation division of the Attorney General's Office. Moreover, the submitted information reflects that the crime victim in question was not an employee of a governmental body at the time of the incident to which the information pertains. Furthermore, the victim in question is deceased. Section 552.132 was enacted to protect personal privacy; thus, any protection afforded by this exception is extinguished on the individual's death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.) (right of privacy is purely personal and terminates on death of person whose privacy is invaded); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (action for invasion of privacy can be maintained only by living individual whose privacy is invaded) (quoting Restatement of Torts 2d). Therefore, the department may not withhold any of the submitted information under section 552.132.

We note that section 552.101 may be applicable to a social security number contained in the submitted information.¹ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. The 1990 amendments to the federal Social Security Act make confidential social security numbers and related records that were obtained or are maintained by a state

¹This office will raise section 552.101 and other mandatory exceptions to disclosure on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision Nos. 674 at 3 n.4 (2001) (mandatory exceptions), 325 at 2 (1982) (attorney general will raise statutory predecessor to Gov't Code § 552.101).

agency or political subdivision of the state under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). We have no basis for concluding that the social security number that we have marked is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of the federal law. We also note that, because the federal law protects personal privacy, the deceased crime victim's social security number may not be withheld under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I). We caution you, however, that the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code § 552.007, .352. Prior to releasing the marked social security number, you should ensure that it was not obtained and is not maintained by the department under any provision of law enacted on or after October 1, 1990.

We also note that section 552.136 is applicable to some of the submitted information. This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked an insurance policy number that the department must withhold under section 552.136.

In summary: (1) the department must withhold the marked Texas motor vehicle information under section 552.130; (2) the marked social security number may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; and (3) the marked insurance policy number must be withheld under section 552.136. The rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

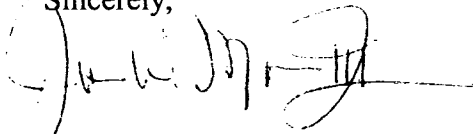
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 222716

Enc: Submitted documents

c: Mr. Ben Cuttino
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(w/o enclosures)